

INTERAGENCY AGREEMENT
BETWEEN
THE UNITED STATES DEPARTMENT OF ENERGY
NATIONAL NUCLEAR SECURITY ADMINISTRATION
OFFICE OF INFRASTRUCTURE AND FACILITIES MANAGEMENT
AND
THE UNITED STATES DEPARTMENT OF THE ARMY

I. PURPOSE

This Interagency Agreement for "Engineering Technical Support", hereinafter designated "IA", constitutes an agreement on efforts of support to be conducted by the U.S. Department of the Army ("DA") and the U.S. Department of Energy, National Nuclear Security Administration ("NNSA") ("the Parties"). The DA will, to the extent agreed to by the parties, provide engineering, construction management, project management, facilities management, economic modeling and other technical support to the NNSA Complex (NA-52) for the management of its Facilities and Infrastructure Recapitalization Program ("FIRP"). The NNSA Complex is defined as the eight NNSA sites. These sites are the Kansas City Plant, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, Nevada Test Site, Pantex Plant, Sandia National Laboratories, Savannah River Site, and the Y-12 Plant. Engineering Technical Support may also be required in support of the NNSA Service Center (personnel located in Albuquerque NM, Las Vegas, NV and Oakland, CA)

II. AUTHORITY

This IA is executed under authority of the Economy in Government Act, 31 U.S.C. 1535. The placement of all orders for services under this agreement shall comply with Federal Acquisition Regulation Subpart 17-5 Interagency Acquisitions Under the Economy Act, and Department of Defense Federal Acquisition Regulation Supplement ("DFARS"), Subpart 217.5, Interagency Acquisitions under the Economy Act.

III. PROCEDURE

NNSA and DA shall complete a separate Management Plan that designates the roles, responsibilities, methods, and procedures to be followed in all projects involving requests for assistance. The Management Plan shall provide for scope, schedule, estimated cost, and other requirements for specific projects.

IV. SCOPE OF WORK

The work will be performed within the framework of the General Statement of Work contained in the Management Plan, and in accordance with specific Task Orders to be executed pursuant to this IA. NNSA shall enter into all contracts pursuant to this IA and any Task Orders under this IA; DA shall not enter into any contracts pursuant to this IA or its Task Orders. Nothing in this IA shall be construed to require the NNSA

to use the DA or to require the DA to provide any goods or services to the NNSA, except as may be set forth in Task Orders.

V. TASK ORDERS

Task Orders will be issued under this IA to identify specific work requirements including both scope and schedule and to obligate funds. Task Orders from NNSA to the DA will be issued and documented in accordance with existing procedures. These documents also will serve to confirm agreement, understanding, and acceptance of the specific work requirements. No work under this agreement will commence until a properly executed Task Order is made available to the DA and funds are obligated to cover expenses anticipated for the initial period of performance. All Task orders shall comply with the requirements of the Economy Act.

VI. TASK ORDERING PROCEDURES

A. NNSA shall identify work requirements and issue a request for a Task Order proposal to DA. Upon receipt of such a request, the DA will provide an estimate of costs and schedule to the FIRP Program Manager or decline to perform the work. Work under this IA will begin only after cost and schedule determinations are concluded between the parties, issuance of a Task Order by NNSA's Authorized official (Contracting Officer), and acceptance of the Task Order by the DA's Authorized Official. The Authorized Official for the NNSA is the Contracting Officer and for the DA, the Program Director.

B. As an alternate to the above procedure, the NNSA's Authorized Official may, under circumstances of extraordinary urgency, unilaterally issue a Task Order without first issuing a request for task proposal. The DA's Authorized Official, upon receipt of such a Task Order, may accept such Task Order and immediately commence work. Within thirty (30) calendar days after receipt of such a Task Order, DA shall submit a Task Order Management Plan to the NNSA's Authorized Official which is subject to review, discussion, and subsequent resubmittal. The DA shall not incur costs in excess of the amount specified in any Task Order issued pursuant to this paragraph. For Task Orders issued pursuant to this paragraph, the DA shall not incur costs beyond the initial thirty (30) calendar day period without written authorization of the NNSA's Authorized Official. If the necessary costs are not authorized beyond the initial 30 days, the DA may terminate the Task Order issued pursuant to this paragraph when funds specified for the Task Order are exhausted, notwithstanding Article XII. The NNSA shall be responsible for all termination costs.

VII. DELIVERABLES/REPORTS/DUE DATES

A. This IA will become effective at the time of signing and shall remain in effect until amended, modified, or terminated as provided in Article XII.

B. Task Orders issued by NNSA under this IA shall specify the work requirements, reporting requirements, report approval procedures, as well as periods of

performance. Deliverables prepared by the DA under this agreement shall comply with the requirements of Article II and, whenever possible, follow the NNSA's guidelines.

C. The DA shall provide quarterly and annual reports (Fiscal Year basis) on the overall technical status and cost management of all accepted tasks. The fourth quarter technical and cost management reports shall be considered the annual report and shall be submitted by 30 October of each year.

VIII. PROGRAM OFFICERS/OFFICIALS

The following individuals will serve as Program Officers/Officials for the purpose of this IA:

A. Signatories of this document are identified in Blocks No. 12 and 13 of the face page of this document and they, or their successors or designated representatives, are the only individuals authorized to change this IA.

B. Officials authorized to carry out work undertaken pursuant to the IA and to authorize individual task orders, or their successors or designated representatives, are identified in Blocks 2 and 12 of the face page of this document and are:

- (1) DA Program Director.
- (2) NNSA Contracting Officer.

C. The terms, conditions, or scope of work of Task Orders may only be changed if agreed to by the DOE Contracting Officer and the DA Program Director or their successors or designated representatives.

D. The work performed under this agreement is subject to management/monitoring by:

- (1) NNSA FIRP Program Manager.
- (2) DA Program Manager to be assigned by the DA Program Director.

The NNSA FIRP Program Manager and the DA Program Manager (or designated representative) will be responsible for coordinating with the other organization in administering the technical aspects of this agreement. The NNSA Program Manager and the DA Program Manager do not have the authority to make any changes to terms, conditions, or work scope of any Task Order issued under this agreement; any proposal for such changes shall be referred to the NNSA Contracting Officer and the DA Program Director for action.

IX. OBLIGATION OF FUNDS

A. NNSA will provide clear definition of funding arrangements / requirements for each work item under the Management Plan created pursuant to Article III. The funding arrangements/requirements will be specifically defined in the individual Task Orders.

Funds will be obligated on each Task Order and approved in accordance with the Management Plan created pursuant to Article III. This Article controls in the event of a conflict between the IA and the attached Department of Energy Funds Out Interagency Agreement.

B. The NNSA shall pay all allowable costs associated with the DA's provision of goods or services under this Interagency Agreement. The DA shall not incur costs beyond the estimate of costs without following the procedure outlined in paragraph C of this Article. The NNSA shall finance work under this IA on a reimbursable basis. The DA shall bill the NNSA monthly for costs incurred using the On Line Payment and Collection System (OPAC). This paragraph does not excuse NNSA's duty to pay promptly all bills presented to it by the DA.

C. If the DA forecasts its actual costs under a Task Order to exceed the amount of funds available under that Task Order, it shall promptly notify NNSA of the amount of additional funds necessary to complete the work under that Task Order. The NNSA shall either provide the additional funds to the DA under an amended Task Order, or require that the scope of the work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that Task Order.

X. PAYMENTS

Payments will be made on the basis of actual costs incurred. Costs incurred on each Task Order may be invoiced on a single invoice, but each Task Order's charges shall be broken out separately in appropriate detail as specified by NNSA in accordance with the provisions of the Management Plan created pursuant to Article III, and otherwise may be set forth in each Task Order.

XI. PROCUREMENT POLICY

A portion of the work performed under this IA may be contracted with non-agency sources. This work will be contracted by the NNSA as approved by the Contracting Officer.

A. NNSA is responsible for all contracting under this IA and any Task Orders pursuant to this IA. DA shall not be responsible for any contracting unless later agreement so provides.

B. The DA may solicit and accept support for portions of work defined by Task Orders from other offices within its agency. In doing so, the DA shall be responsible for coordination and management of work performed under such arrangement.

C. Intra-departmental agreements entered into by the DA under this IA will be coordinated with NNSA.

XII. AMENDMENT, MODIFICATION OR TERMINATION

This IA may be terminated by mutual agreement of the NNSA and the DA or by either party upon ninety (90) days written notice of such termination to the other. NNSA may terminate individual Task Orders issued to the DA upon sixty (60) days written notice of such termination to the DA. In the event of such termination, the DA shall be reimbursed for obligations actually incurred to the effective date of termination, all costs for contract settlement, contract claims, USACE overhead, and for commitments extending beyond the effective date of termination which the DA, in the exercise of due diligence, is unable to cancel. The DA shall provide timely cooperation to the NNSA in transferring and/or terminating all on-going contracts and activities prior to the effective date of termination. Payments under a Task Order, including payments under this article, shall be subject to availability of NNSA funding.

XIII. RESPONSIBILITY FOR WORK

The DA is responsible for accomplishing all tasks issued under this IA in accordance with applicable law. If there is a failure by the DA to comply with applicable law resulting in liability imposed on the United States, the NNSA is responsible for providing the funds necessary to discharge liabilities and the DA will accept non-fiscal responsibility for its actions and will support the NNSA requests for additional appropriations as may be required by such failure. The NNSA shall obtain for the DA access to all work sites and support facilities, and shall perform all coordination with and obtain, if necessary, any permits from federal, state and local agencies, as necessary during the execution of each Task Order.

XIV. APPLICABLE LAWS

This IA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States. Unless otherwise required by law, all work undertaken by the DA shall be governed by DA policies and procedures.

XV. MANIFESTS AND RELATED DOCUMENTS

NNSA personnel shall execute all manifests and related documents, federal and state, that pertains to work performed under this IA by the DA or its contractors.

XVI. CONTRACT CLAIMS AND DISPUTES

All claims and disputes by contractors arising under or relating to contracts awarded by the NNSA shall be resolved in accordance with Federal law and the terms of the individual contract. NNSA shall have dispute resolution authority for these claims.

NNSA shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate.

XVII. DISPUTE RESOLUTION

The parties agree that, in the event of a dispute between the parties, the NNSA and the DA shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the parties. The parties agree that, in the event such measures fail to resolve the dispute, they shall refer it for resolution to the Office of Management and Budget.

XVIII. RESPONSIBILITY FOR COSTS

If liability of any kind is imposed on the United States relating to the DA's provision of goods or services under this MOA, the DA will accept accountability for its actions, but the NNSA shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs. This obligation extends to all funds legally available to discharge this liability, including funds that may be made legally available through transfer, reprogramming or other means. Should the NNSA have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, they remain responsible for seeking additional funds from Congress for such purpose, although nothing in this MOA shall be construed to imply that Congress will appropriate funds sufficient to meet the liability.

Notwithstanding the above, this MOA does not confer any liability upon the NNSA for claims payable by USACE under the Federal Torts Claims Act. Provided further that nothing in this Agreement is intended or will be construed to create any rights or remedies for any third party and no third party is intended to be a beneficiary of this Agreement.

XIX. PUBLIC INFORMATION

Justification and explanation of the NNSA's programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of the NNSA. The DA may provide, upon request, any assistance necessary to support the NNSA justification or explanations of the NNSA's programs conducted under this IA. In general, the NNSA is responsible for all public information. The DA may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and the administration process. The NNSA or the DA shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to Task Orders under this IA.

XX. MISCELLANEOUS

A. Other Relationship's or obligations

This IA shall not affect any pre-existing or independent relationships or obligations between the NNSA and the DA.

B. Survival

The provisions of this IA which require performance after the expiration or termination of this IA shall remain in force notwithstanding the expiration or termination of this IA.

C. Severability

If any provision of this IA is determined to be unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

D. Supremacy

This IA controls in the event of a conflict between the IA and a Task Order.


XXI. OFFICIALS NOT TO BENEFIT

No officer, employee, special Government employee, or agent of either party shall be admitted to any share or part of this IA or to any benefit that may arise therefrom. This provision shall not be construed to extend to either party contracting for its use or for the public's general benefit.


XXII. EFFECTIVE DATE

This IA shall become effective when signed by both the NNSA and the DA.

National Nuclear Security Administration


Martha Youngblood
Contracting Officer
NNSA

U.S. Department of the Army


Dwight A. Beranek, P.E.
Deputy Director of Military Programs
U.S. Army Corps of Engineers

DATE: 4/17/03

DATE: 4/11/03

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Funds-Out Interagency Agreement General Provisions/Requirements

Department of Energy Interagency Agreement No. DE-AI04-01AL

1. Incurrence of Costs. The recipient/performing agency is not authorized to expend or commit funds in excess of the amount obligated. If it is anticipated that the funds provided by this agreement will be insufficient to complete the work requirements, the written approval of the DOE Contracting Officer must be obtained prior to the incurrence of costs in excess of the amount provided.

2. Delivery Requirements (if any). See Attachment

3. Reporting Requirements. If checked ☐, a final technical report shall be submitted to DOE which documents and summarizes all of the work completed under this Agreement. _____ copy(ies) shall be submitted to the DOE Contracting Officer (Face page, Item 11), and _____ copy(ies) shall be submitted to the DOE Program Officer (Item 10). If checked, ☐, two copies of research reports or formal publications should also be sent to the DOE's Office of Scientific and Technical Information, P.O. Box 62, Oak Ridge, TN 37831, or, if electronic formats (e.g., SGML, HTML, Postscript, or TIFF4) (phone: 423-576-8342; electronic mail address bob.donahue@ccmail.osti.gov).

Additional reporting requirements (if any):
See Attachment

4. Patents and Technical Data. Disposition of rights to inventions made under any contract, grant or cooperative agreement under this Agreement with any small business firm or domestic nonprofit organization will be in accordance with 35 U.S.C. §§ 200-212. If all other contracts, grants or cooperative agreements under this Agreement, the performing agency shall coordinate the disposition of rights to inventions with the DOE Patent Counsel.

5. Issue Resolution. Unless otherwise indicated below, it is expected that programmatic guidance will be handled through discussions between the staff of the Performing Agency's Program Director listed in Face page, item 2c and the DOE Program Officer, Face page item 11. Any administrative issues including billing questions, unresolved items or issues requiring a formal change to this Agreement shall be addressed to the DOE Contracting Officer, Face page, item 12.

6. Termination. DOE may terminate this Agreement upon 30 days written notice of such termination addressed to the performing agency. In the event of such termination the performing agency shall be reimbursed, to the extent permitted, for obligations actually incurred to the effective date of the termination and for commitments extending beyond the effective date of termination to a date not later than the date upon which the Agreement would have expired if not terminated under this paragraph, which the performing agency, in the exercise of diligence, is unable to cancel. Payments under this Agreement, including payments under this article shall not exceed the amount(s) committed under this Agreement.

7. Financing.

- a. DOE authorizes the Performing Agency to expend funds in adherence to the requested work and/or deliverables cited herein. DOE's preferred method for reimbursing the Performing Agency is via the On-Line Payment and Collection System (OPAC). Each OPAC charge must clearly make reference to DOE's IA No. cited in block 3.a. and must be supported with the appropriate documents cited in Paragraph 3. above. If OPAC is not a satisfactory billing method, a mutually agreeable alternative should be negotiated before acceptance of this Agreement.
- b. When applicable, vouchers for payments will be submitted on the agreed upon form.
- c. When applicable, any funds advanced which are expected to remain beyond the original period of performance for a project which is incomplete, or for which there is an increased scope of work, will remain available to the Performing Agency if the Agreement is amended by the DOE to extend the period of performance for the work beyond the original completion date. Request for such time extensions should be made to the DOE by the Performing Agency at least 30 days prior to the end of the performance period.
- d. When applicable, any funds advanced for a continuing project remain available for the entire performance period of the project, unless there is a date specified as a required completion date after which no further funds shall be expended.

8. Other Provisions.